

SENATE BILL No. 170

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-8-8; IC 35-44.1-3-10.

Synopsis: Sexual misconduct by a service provider. Makes it sexual misconduct, a Level 5 felony, for a service provider to knowingly or intentionally engage in sexual intercourse or other sexual conduct with a person who is subject to lawful supervision by: (1) the department of correction; (2) a court; (3) a probation department; or (4) a community corrections program, a community transition program, or another similar program. Makes it sexual misconduct, a Level 4 felony, for a service provider who is at least 18 years of age to knowingly or intentionally engage in sexual intercourse or other sexual conduct with a person who is: (1) less than 18 years of age; and (2) subject to lawful supervision by the department of correction, a court, a probation department, or a community corrections program, a community transition program, or another similar program. Makes conforming amendments.

Effective: July 1, 2014.

Young R Michael

January 8, 2014, read first time and referred to Committee on Corrections & Criminal Law.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 170

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 11-8-8-4.5, AS AMENDED BY P.L.214-2013,
2 SECTION 4, AND AS AMENDED BY P.L.158-2013, SECTION 171,
3 IS CORRECTED AND AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2014]: Sec. 4.5. (a) Except as provided in
5 section 22 of this chapter, as used in this chapter, "sex offender" means
6 a person convicted of any of the following offenses:
7 (1) Rape (IC 35-42-4-1).
8 (2) Criminal deviate conduct (IC 35-42-4-2) ~~(repeated (before its~~
9 ~~repeal). (before its repeal on July 1, 2014).~~
10 (3) Child molesting (IC 35-42-4-3).
11 (4) Child exploitation (IC 35-42-4-4(b)).
12 (5) Vicarious sexual gratification (including performing sexual
13 conduct in the presence of a minor) (IC 35-42-4-5).
14 (6) Child solicitation (IC 35-42-4-6).
15 (7) Child seduction (IC 35-42-4-7).
16 (8) Sexual misconduct with a minor (**IC 35-42-4-9**) as a Class A,



Class B, or Class C *felony* (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a crime committed after June 30, 2014), (~~IC 35-42-4-9~~), unless:

(A) the person is convicted of sexual misconduct with a minor as a Class C *felony* (for a crime committed before July 1, 2014) or a Level 5 felony (for a crime committed after June 30, 2014);

(B) the person is not more than:

(i) four (4) years older than the victim if the offense was committed after June 30, 2007; or

(ii) five (5) years older than the victim if the offense was committed before July 1, 2007; and

(C) the sentencing court finds that the person should not be required to register as a sex offender.

(9) Incest (IC 35-46-1-3).

(10) Sexual battery (IC 35-42-4-8).

(11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age, and the person who kidnapped the victim is not the victim's parent or guardian.

(12) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age, and the person who confined or removed the victim is not the victim's parent or guardian.

(13) Possession of child pornography (IC 35-42-4-4(c)).

(14) Promoting prostitution (IC 35-45-4-4) as a Class B *felony* (for a crime committed before July 1, 2014) or a Level 4 felony (for a crime committed after June 30, 2014).

(15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the victim is less than eighteen (18) years of age.

(16) Sexual trafficking of a minor (IC 35-42-3.5-1(c)).

(17) Human trafficking (IC 35-42-3.5-1(d)(3)) if the victim is less than eighteen (18) years of age.

(18) Sexual misconduct by a service provider with a detained **or supervised** child (IC 35-44.1-3-10(c)).

(19) An attempt or conspiracy to commit a crime listed in subdivisions (1) through (18).

(20) A crime under the laws of another jurisdiction, including a military court, that is substantially equivalent to any of the offenses listed in subdivisions (1) through (19).

(b) The term includes:

(1) a person who is required to register as a sex offender in any jurisdiction; and

(2) a child who has committed a delinquent act and who:



(A) is at least fourteen (14) years of age;
 (B) is on probation, is on parole, is discharged from a facility by the department of correction, is discharged from a secure private facility (as defined in IC 31-9-2-115), or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be an offense described in subsection (a) if committed by an adult; and
 (C) is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

(c) In making a determination under subsection (b)(2)(C), the court shall consider expert testimony concerning whether a child is likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.

SECTION 2. IC 11-8-8-5, AS AMENDED BY P.L.13-2013, SECTION 42, AS AMENDED BY P.L.214-2013, SECTION 5, AND AS AMENDED BY P.L.158-2013, SECTION 172, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) Except as provided in section 22 of this chapter, as used in this chapter, "sex or violent offender" means a person convicted of any of the following offenses:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2) *(before its repeal)*.
~~on July 1, 2014 (repealed).~~
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4(b)).
- (5) Vicarious sexual gratification (including performing sexual conduct in the presence of a minor) (IC 35-42-4-5).
- (6) Child solicitation (IC 35-42-4-6).
- (7) Child seduction (IC 35-42-4-7).
- (8) Sexual misconduct with a minor **(IC 35-42-4-9)** as a Class A, Class B, or Class C *felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 4, or Level 5 felony (for a crime committed after June 30, 2014), (IC 35-42-4-9)*; unless:
 - (A) the person is convicted of sexual misconduct with a minor as a Class C felony *(for a crime committed before July 1, 2014) or a Level 5 felony (for a crime committed after June 30, 2014)*;
 - (B) the person is not more than:
 - (i) four (4) years older than the victim if the offense was committed after June 30, 2007; or
 - (ii) five (5) years older than the victim if the offense was



- 1 committed before July 1, 2007; and
- 2 (C) the sentencing court finds that the person should not be
- 3 required to register as a sex offender.
- 4 (9) Incest (IC 35-46-1-3).
- 5 (10) Sexual battery (IC 35-42-4-8).
- 6 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen
- 7 (18) years of age, and the person who kidnapped the victim is not
- 8 the victim's parent or guardian.
- 9 (12) Criminal confinement (IC 35-42-3-3), if the victim is less
- 10 than eighteen (18) years of age, and the person who confined or
- 11 removed the victim is not the victim's parent or guardian.
- 12 (13) Possession of child pornography (IC 35-42-4-4(c)).
- 13 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony
- 14 *(for a crime committed before July 1, 2014) or a Level 4 felony*
- 15 *(for a crime committed after June 30, 2014).*
- 16 (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the
- 17 victim is less than eighteen (18) years of age.
- 18 (16) Sexual trafficking of a minor (IC 35-42-3.5-1(c)).
- 19 (17) Human trafficking (IC 35-42-3.5-1(d)(3)) if the victim is less
- 20 than eighteen (18) years of age.
- 21 (18) Murder (IC 35-42-1-1).
- 22 (19) Voluntary manslaughter (IC 35-42-1-3).
- 23 (20) Sexual misconduct by a service provider with a detained **or**
- 24 **supervised** child (IC 35-44.1-3-10(c)).
- 25 (21) An attempt or conspiracy to commit a crime listed in
- 26 subdivisions (1) through (20).
- 27 (22) A crime under the laws of another jurisdiction, including a
- 28 military court, that is substantially equivalent to any of the
- 29 offenses listed in subdivisions (1) through (21).
- 30 (b) The term includes:
- 31 (1) a person who is required to register as a sex or violent
- 32 offender in any jurisdiction; and
- 33 (2) a child who has committed a delinquent act and who:
- 34 (A) is at least fourteen (14) years of age;
- 35 (B) is on probation, is on parole, is discharged from a facility
- 36 by the department of correction, is discharged from a secure
- 37 private facility (as defined in IC 31-9-2-115), or is discharged
- 38 from a juvenile detention facility as a result of an adjudication
- 39 as a delinquent child for an act that would be an offense
- 40 described in subsection (a) if committed by an adult; and
- 41 (C) is found by a court by clear and convincing evidence to be
- 42 likely to repeat an act that would be an offense described in



1 subsection (a) if committed by an adult.

2 (c) In making a determination under subsection (b)(2)(C), the court
3 shall consider expert testimony concerning whether a child is likely to
4 repeat an act that would be an offense described in subsection (a) if
5 committed by an adult.

6 SECTION 3. IC 35-44.1-3-10, AS AMENDED BY P.L.158-2013,
7 SECTION 516, IS AMENDED TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2014]: Sec. 10. (a) As used in this section,
9 "service provider" means a public servant or other person employed by
10 a governmental entity or another person who provides goods or
11 services to a person who is subject to lawful detention **or supervision.**

12 (b) A service provider who knowingly or intentionally engages in
13 sexual intercourse or other sexual conduct (as defined in
14 IC 35-31.5-2-221.5) with a person who is subject to lawful:

15 (1) detention; **or**

16 (2) **supervision by:**

17 (A) **the department of correction;**

18 (B) **a court;**

19 (C) **a probation department; or**

20 (D) **a community corrections program, a community**
21 **transition program, or another similar program;**

22 commits sexual misconduct, a Level 5 felony.

23 (c) A service provider at least eighteen (18) years of age who
24 knowingly or intentionally engages in sexual intercourse or other
25 sexual conduct (as defined in IC 35-31.5-2-221.5) with a person who
26 is:

27 (1) less than eighteen (18) years of age; and

28 (2) subject to lawful:

29 (A) detention; **or**

30 (B) **supervision by:**

31 (i) **the department of correction;**

32 (ii) **a court;**

33 (iii) **a probation department; or**

34 (iv) **a community corrections program, a community**
35 **transition program, or another similar program;**

36 commits sexual misconduct, a Level 4 felony.

37 (d) It is not a defense that an act described in subsection (b) or (c)
38 was consensual.

39 (e) This section does not apply to sexual intercourse or other sexual
40 conduct (as defined in IC 35-31.5-2-221.5) between spouses.

